With respect, I follow the judgment of Ali J. (as he then was) in *Law Kiat Long's* case and hold for the same reasons that this court has no jurisdiction to entertain the application for an injunction against an officer of the Government. In my view, if section 29(2) supra is read in conjunction with section 29(1)(a), which provides that

(a) Where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance but may in lieu thereof make an order declaratory of the rights of the party,

it will be readily seen that while it is within the competency of the court to make a declaratory order in lieu, it has not the right to grant an injunction against the Government or any order against any Government officer which would have the effect of being an injunction against the Government.

The third objection which is to the designation of the respondent is said by the respondent to have been over-ruled by H. S. Ong J. (as he then was) in Originating Motion No. 9 of 1970, a similar application also against the State Commissioner, when he made the order stating a case for the decision of the Federal Court. The case was stated in Federal Court Special Case No. 1 of 1973. (*Philip Hoalim Jr. & Anor.* v. *State Commissioner, Penang*[7]).

I am however unable to find that this point though raised in the Originating Motion was considered by my learned brother. It was not taken in the Federal Court and I therefore consider myself, with respect, free from authority.

Section 16(2) of the National Land Code provides for any action, suit or other proceeding relating to land in which it is sought to establish any liability on the part of the State Authority to be brought against the State Commissioner in the name of his office.

However, State Commissioner was only an abbreviation of the full title of Commissioner of Lands and Mines for the state; see section 5 of the National Land Code. The proper designation is therefore the Commissioner of Lands and Mines, Penang. But that is not the only difficulty. Even before the filing of the motion, an amendment in P.U.(B) 324 of 1970 was passed whereby this officer was re-styled Director of Land and Mines, Penang.

The learned Legal Adviser took a further point, in his submission that this officer was not a responsible party. However this did not come within the grounds specified by him in his application and for this reason I do not think I will rule on it.

I therefore agree that the respondent has been wrongly designated but since the error is a matter of appellation, it does not, with respect, appear to be of any great materiality. The notes in *Mallal's* Supreme Court Practice under "misnomer" read as follows:

"In the case of the mere misnomer of a plaintiff on a writ, the defendant by a summons supported by an affidavit, can compel the plaintiff to amend. If the defendant does not exercise this power, and the matter proceeds to trial, the misnomer can then be amended and in no circumstances can it affect the substantive judgment which the court is called on to pronounce."

I take it that the same applies to a misnomer of the defendant. Insofar as this mistake is concerned, I propose to leave it to the parties to take the appropriate action.

For the reasons given above, the only order I would effectively make on the application by the learned Legal Adviser Penang is to strike out prayer 3 for an injunction.

Costs should, I think, be costs in the cause.

Order accordingly.

Solicitors: *Lim Kean Siew & Co.*

NG BEE v. CHAIRMAN, TOWN COUNCIL, KUALA PILAH

[O.C.J. (Ajaib Singh J.) November 8, 1974]
[Seremban — Originating Motion No. 29 of 1974]

Administrative Law — Application requiring specific act to be done — Application in nature of mandamus — Right to performance of public duty — Respondent under no public duty to do act requested — Remedy applied for not complete — Alternative remedy — Town Boards Enactment (F.M.S. Cap. 137), s. 76 — Specific Relief Act, 1950, ss. 44(1) and 45.

The applicant applied for an order that the respondent do apply to the magistrate for an order for the demolition of premises in Kuala Pilah belonging to her. The respondent had made an order under section 76(1)(a) of the Town Broads Enactment prohibiting any person from entering or remaining in the said building on the ground that it was in a ruinous and dangerous condition likely to fall.

Held: (1) before the court may consider exercising its discretion in favour of granting the order under section 44(1) of the Specific Relief Act it must be satisfied that the applicant has a right to the performance of a duty under any law by a person holding a public office. The court must also be satisfied that all the conditions laid down in the proviso to section 44(1) of the Specific Relief Act are fulfilled;

(2) in this case the applicant had failed to show that she has the right to the performance of a public duty by the respondent;

(3) the respondent in this case was under no duty to make any application to the magistrate. Section 76(iii)(b) of the Town Boards Enactment empowered the respondent to make an application to the magistrate for a demolition order but the subsection did not impose any duty on him to do so;

(4) the order sought for was inadequate by itself to provide the applicant with a complete remedy, as it would have been left entirely to the discretion of the magistrate whether or not he would have ordered the demolition of the premises;

(5) on all these grounds, the application should be dismissed.

ORIGINATING MOTION.

Gurdial Bakan Singh for the applicant.

Suleiman Hashim (Legal Adviser, Negri Sembilan) for the respondent.

Ajaib Singh J.: This was an application by notice of motion for an order that the respondent, who is the Chairman of the Town Council, Kuala Pilah, do forthwith apply to the magistrate under section 76(iii)(b) of the Town Boards Enactment Cap. 137, for an order of demolition of premises No. 200 Jalan Tung Yen, Kuala Pilah. Section 76 of the Enactment reads as follows:—

"76. (i) If in the opinion of the Chairman any building or anything affixed thereto is in a ruinous state, likely to fall or in any way dangerous to the inhabitants or occupiers of such

building or to any neighbouring buildings or to the inhabitants or occupiers thereof or to the public the Chairman may immediately, if it appears to him to be necessary—

(a) prohibit by order in the Form E I in the schedule any person from entering or remaining in such building;

(b) cause a proper boarding or fence to be put up for the protection of the public or take such other steps as appear to him necessary to render such building secure.

(ii) A copy of the order made under sub-section (i) posted on a conspicuous place on the building shall be deemed to be sufficient notice to any person that he is prohibited from entering or remaining in such building and any person wilfully acting in contravention of such prohibition shall be liable to a fine of one hundred dollars.

(iii)(a) A copy of such order shall be served on the owner of the building who may within seven days of such service and on giving notice to the Chairman apply to a Magistrate to set aside the order for good cause shown.

(b) If no such application is made by the owner or if the Magistrate does not set aside the order the Chairman may make an application to the Magistrate for an order that the owner do demolish the building, and notice of such application shall be served on the owner.

(iv) The Magistrate after hearing such application and upon being satisfied that the building or anything affixed thereto is in a ruinous state, likely to fall or in any way dangerous to the inhabitants or occupiers of such buildings or to any neighbouring buildings or to the inhabitants thereof or to the public, may make on the owner a summary order for the demolition of the building within a time specified in the order and such order may also contain a direction that the materials of the building or any part of such materials shall be destroyed.

(v) The provisions of section 84 shall apply to any order and to the failure of the owner to comply with the terms of any order made under sub-section (iv).

(vi) For the purpose of section 88 any order made under subsection (iv) shall be deemed to be a nuisance order."

The applicant is the owner of the building concerned which is a double-storey shop house in a row of shop houses and which is about 40 years old. In her affidavit dated 10th April, 1974, in support of her application, the applicant states, *inter alia*, that the building is in a very dangerous condition and is a danger not only to the occupiers of the building but also to members of the public who pass along its five-foot way. On 22nd April, 1971, she wrote to the respondent requesting him to declare the premises as ruinous and a danger to the inhabitants and occupiers thereof and to the public. The respondent by letter dated 31st July, 1971, requested for a report on the building by a structural engineer. This was done by the applicant on 10th November, 1971, when she forwarded a copy of a report prepared by a firm of consultant engineers. On 11th March, 1972, the respondent made an order under section 76(i)(a) of the Town Boards Enactment prohibiting any person from entering or remaining in the said building on the grounds that it was in a ruinous and dangerous condition likely to fall and that it was dangerous to the neighbouring buildings, the inhabitants or occupiers thereof and to the public. This order was posted on the building itself. On the same day the respondent wrote to the applicant to the effect that the building was very old and in a dangerous state and that it might possibly collapse and endanger the safety of the residents nearby and the public. In this letter the applicant was also required to put up supports to the building and fence it for the safety of the public and to take appropriate action to strengthen the building.

On 1st June, 1972, the applicant wrote to the respondent requesting him to apply to the magistrate for an order that the owner, namely herself, do demolish the said premises under section 76(iii)(b) of the Town Boards Enactment. This was followed by another letter dated 27th November, 1972, addressed to the respondent giving notice that unless he complied with the applicant's earlier letter of 1st June, 1972, she would apply to the High Court to compel the respondent to perform his public duty. On 29th December, 1972, the respondent replied to the effect that the applicant's request was rejected. On 10th August, 1973, the applicant again wrote to the respondent for a reconsideration of his decision rejecting her request. This was followed by several meetings between her solicitor and the State Legal Adviser for the purpose of resolving the matter but these meetings produced no result.

The applicant further states in her affidavit that with the passage of another two years the premises have become more dangerous. She says that it is the incumbent duty of the respondent to perform his public duty by obtaining the necessary order of the magistrate as provided for in section 76(iii)(b) of the Town Boards Enactment. Upon the order being obtained from the magistrate she undertakes to have the premises demolished at her own expense and if necessary under the supervision of the respondent.

The respondent has also filed an affidavit dated 20th May, 1974, in reply. He does not dispute the facts as set out in the applicant's affidavit save that he does not agree with that part of the report of the consultant engineers which states that the building would probably collapse. He says that the references in the report to the probable collapse of the premises are somewhat exaggerated. It may be observed that the respondent's stand here is quite inconsistent with his own opinion of the condition of the building when he made his order of 11th March, 1972, under section 76(i)(a) of the Town Boards Enactment. The respondent now disagrees that the building would probably collapse whereas in his order he had prohibited any person from entering or remaining therein on the grounds that the building was in a ruinous and dangerous condition and likely to fall. Anyway, the respondent further states in his affidavit that he is not obliged in law to make any application as requested by the applicant as she does not qualify for the remedy she seeks nor is she a person injured within the meaning of section 45 of the Specific Relief (Malay States) Ordinance, 1950. He also states that the applicant has other specific and adequate legal remedy under section 18 of the Control of Rent Act, 1966, the premises in question being controlled premises.

The application was made under section 44(1) of the Specific Relief (Malay States) Ordinance, 1950, now superseded by the Specific Relief Act, 1950 (Revised — 1974). The order sought for by the applicant is in the nature of the old prerogative writ of *mandamus* which was substituted by the order of *mandamus* by the Administration of Justice (Miscellaneous Provisions) Act, 1938, of the United Kingdom. The principles applicable to the issue of those writs or orders of *mandamus* are equally applicable and relevant to any application for an order under section 44(1) of the Specific Relief Act, 1950, which reads as follows:—

"44. (1) A judge may make an order requiring any specific act to be done or forborne, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or any court subordinate to the High Court: Provided that —

(a) an application for such an order be made by some person whose property, franchise, or personal right would be injured by the forbearing or doing, as the case may be, of the said specific act;

(b) such doing or forbearing is, under any law for the time being in force, clearly incumbent on the person or court in his or its public character, or on the corporation in its corporate character;

(c) in the opinion of the judge the doing or forbearing is consonant to right and justice;

(d) the applicant has no other specific and adequate legal remedy; and

(e) the remedy given by the order applied for will be complete."

Section 45 of the Specific Relief Act, 1950, sets out the procedure to be adopted in an application under section 44(1) of the Act. The application must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof. The High Court's power to make an order compelling a public officer to perform his public duty is discretionary. Before the court may consider exercising its discretion in favour of granting the order it must be satisfied that the applicant has a right to the performance of a duty under any law by a person holding a public office. The court must also be satisfied that all the conditions laid down in the proviso to section 44(1) of the Specific Relief Act are fulfilled.

The respondent is the Chairman of the Town Council and is, therefore, a person holding a public office within the meaning of section 44(1) of the Specific Relief Act. Under the sub-section the court had to be satisfied further that (a) the applicant's property, franchise or personal right would be injured if the respondent did not apply to the magistrate for an order of demolition of her building; (b) that it was clearly incumbent on the respondent in his public character to apply for the order from the magistrate under a law for the time being in force, namely, section 76(iii)(b) of the Town Boards Enactment; (c) that the order sought for by the applicant was consonant to right and justice; (d) that the applicant had no other specific and adequate legal remedy and (e) that the remedy given by the order applied for would be complete.

After giving due consideration to the application, the affidavits and the submissions of learned counsel for the applicant and the respondent I came to the conclusion that the applicant fell short of satisfying all the requirements as laid down in section 45 and in the proviso to section 44(1) of the Specific Relief Act, 1950. In the first place, the applicant failed to show that she had a right to the performance of a public duty by the respondent. There was in fact no mention of her having any such right in her affidavit of 10th April, 1974, so that the application itself was deficient from want of compliance with the provisions of section 45 of the Specific Relief Act which obliged the applicant to state in the affidavit on which her application was founded her right to the performance of a public duty by the respondent. Secondly, the respondent in my opinion was under no duty to make any application to the magistrate. The duty sought to be enforced must be clear and obligatory. Section 76(iii)(b) of the Town Boards Enactment did empower the respondent to make an application to the magistrate for a demolition order but the sub-section did not impose any duty on him to do so. Thirdly, the order sought for was inadequate by itself to provide the applicant with a complete remedy. In making the application her intention clearly was to have her premises demolished. However, the order which she applied for would have merely required the respondent to apply to the magistrate for a demolition order and it would have been left entirely to the magistrate whether or not he would have ordered the demolition of the premises in the exercise of the powers conferred upon him under the provisions of section 76(iv) of the Town Boards Enactment.

In the light of my findings in the preceding paragraph it was not necessary for me to decide the point raised by the respondent that the application had other specific and adequate legal remedy under section 18 of the Control of Rent Act, 1966. However, if I had to decide on this point, assuming that the applicant had fulfilled all the remaining conditions in the proviso to section 44(1) of the Specific Relief Act, 1950, and had satisfactorily complied with the provisions of section 45 of the Act in making her application, I would not have thought that relief to a landlord under section 18 of the Control of Rent Act was the kind of other specific and adequate legal remedy as envisaged in proviso (d) to section 44(1) of the Specific Relief Act. Section 18 of the Control of Rent Act provides for the landlord of any controlled premises to recover possession of the premises for the purpose of development. The procedure set out in this section is somewhat elaborate and cumbersome and the remedy given to the landlord therein bears no relationship to the one sought for by the applicant in this case. The applicant here was seeking not the recovery of premises for the purpose of development but for an order of demolition of her premises. The other specific and adequate legal remedy must not only equate itself with the remedy sought for but must be equally beneficial, effective and convenient.

The application was dismissed with costs.

Application dismissed.

Solicitors: *Gurdial Bakan Singh.*